IN THE HIGH COURT OF BOMBAY AT GOA

MISCELLANEOUS CIVIL APPLICATION NO. 497 OF 2004
IN
FIRST APPEAL NO. 61 OF 1999

Shri Antonio Sequeira
Coutinho Pereira,
Bicholim. ... Applicant

versus

The Custodian of Evacuee Property
and another. ... Respondents

Mr. J. J. D'Souza, Advocate for the Applicant.

Mr. S. S. Kantak, Advocate General with Ms. R. Chodankar, Additional Government Advocate for Respondent No.1.

Mr. I. Aga, Advocate for Respondent No.2.

CORAM : R. M. LODHA &
N. A. BRITTO, JJ.

DATE : 5TH SEPTEMBER, 2005.

P.C.:-

The Respondent No.2 died on 22-11-2001 at Lisbon, Portugal. The application has been made on 5-7-2004. The Applicant in this

application has prayed for condonation of delay of 2 years 2 months and 15 days for bringing the legal representatives of the deceased Respondent No.2 on record. It is stated that the Applicant due to fear of his life has to reside outside India and has to constantly change his residence. In such situation, the Applicant averred that it has been very difficult to monitor the case. The Applicant came to know of the death of the Respondent No.2 only when one of the heirs of the deceased Respondent No.2 moved an application to condone the delay for bringing on record the legal heirs in Civil Miscellaneous Application No.284/2002 in Civil Miscellaneous Application No.417/2002 in Writ Petition No.117/2000 sometime in the month of April, 2002. It is averred that the Applicant has three Attorneys. The Attorney through whom the first Appeal was filed was asked to make necessary application for bringing the legal representatives of the deceased Respondent No.2 on record but that was not done. The Applicant in the aforesaid background has prayed for condonation of delay.

The application is opposed by the Respondent Nos.2.4(i) and 2.4(j). The said Respondents in reply have stated that the Applicant became aware of the death of the Respondent No.2 when the application dated 20-2-2002 was made for bringing on record the legal representatives of the deceased Respondent No.2 in Writ Petition No.117/2000. A copy of the

said application was duly received. The Petitioner in Writ Petition No.117/2000 was represented through Power of Attorney, namely Policarpo C. D'Souza. The present application has been filed through caretaker, namely Mrs. Candida alias Andreza Josefina D'Souza only to make out false case for condonation.

No rejoinder has been filed by the Applicant. It is apparent that the death of the Respondent No.2 that occurred on 22-11-2001 came to the knowledge of the Applicant when the application dated 20-2-2002 was made in Writ Petition No.117/2000. Despite the fact that the Applicant acquired the knowledge of the death of the Respondent No.2 way back in the month of February, 2002, the application for bringing the legal representatives on record and condonation of delay was made in the month of July, 2004. The explanation given by the Applicant that Power of Attorney through whom the first Appeal was filed did not take steps for bringing the legal representatives on record and that he had to remain out of Goa due to fear of his life are make-believe grounds. The long delay of 2 years 2 months and 15 days remains unexplained. The cause shown by the Applicant is not sufficient without the meaning of Section 5 of the Limitation Act. No case is made out for setting aside the abatement. The

delay being not satisfactorily explained, Civil Application is liable to be rejected and we reject it accordingly.

R. M. LODHA, J.

N. A. BRITTO, J.

RD.